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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

YUEYI KUANG,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney  
General,

Respondent.

No. 04-74836

Agency No. A096-169-507

MEMORANDUM<sup>\*</sup>

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted January 13, 2009<sup>\*\*</sup>

Before: O'SCANNLAIN, BYBEE, and CALLAHAN, Circuit Judges.

Yueyi Kuang, a native and citizen of China, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing her appeal from an immigration judge's decision denying her application for asylum, withholding of

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<sup>\*</sup> This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

removal, and protection under the Convention Against Torture (“CAT”). Our jurisdiction is governed by 8 U.S.C. § 1252. We review for substantial evidence. *Li v. Ashcroft*, 378 F.3d 959, 962 (9th Cir. 2004). We dismiss in part, and deny in part the petition for review.

We lack jurisdiction to review the determination that Kuang’s application for asylum was untimely because Kuang’s arrival date is an issue of disputed fact. *See* 8 U.S.C. § 1158(a)(3); *see also Ramadan v. Gonzales*, 479 F.3d 646, 657 (9th Cir. 2007) (per curiam).

Substantial evidence supports the agency’s finding that even if Kuang’s testimony is credible, the harm she experienced in China did not rise to the level of past persecution. *See Gu v. Gonzales*, 454 F.3d 1014, 1019-21 (9th Cir. 2006). Furthermore, substantial evidence supports the agency’s finding that Kuang failed to establish that it is more likely than not that she will be subject to persecution if she returns to China. *See Hoxha v. Ashcroft*, 319 F.3d 1179, 1185 (9th Cir. 2003). We therefore deny the petition with respect to Kuang’s withholding of removal claim.

We lack jurisdiction over Kuang’s CAT claim because that issue was not exhausted before the BIA. *See Barron v. Ashcroft*, 358 F.3d 674, 677-78 (9th Cir. 2004).

**PETITION FOR REVIEW DISMISSED in part; DENIED in part.**